



- 30           ▶ provides for the conditional continuing licensure of a funeral service establishment
- 31 upon the death or termination from employment of an establishment's funeral
- 32 service director;
- 33           ▶ modifies the licensure by endorsement provisions;
- 34           ▶ modifies the unlawful and unprofessional conduct provisions of the act;
- 35           ▶ modifies provisions related to the right and duty to control the disposition of a
- 36 deceased person by surviving relatives or other individuals;
- 37           ▶ provides for forfeiture of the right of disposition under specified circumstances;
- 38           ▶ provides for the resolution of disputes on the right of disposition of a decedent by a
- 39 probate court upon petitioning by relatives of the decedent or a funeral director who
- 40 has custody of the decedent's remains;
- 41           ▶ provides a funeral service establishment and funeral service director with immunity
- 42 from civil and criminal liability and disciplinary action in carrying out the
- 43 disposition of a decedent's remains;
- 44           ▶ modifies provisions related to preneed funeral arrangement contracts and associated
- 45 trust agreements; and
- 46           ▶ makes certain technical changes.

47 **Monies Appropriated in this Bill:**

48           None

49 **Other Special Clauses:**

50           None

51 **Utah Code Sections Affected:**

52 AMENDS:

53           **26-4-16**, as last amended by Chapter 49, Laws of Utah 2003

54           **58-9-102**, as enacted by Chapter 49, Laws of Utah 2003

55           **58-9-201**, as enacted by Chapter 49, Laws of Utah 2003

56           **58-9-301**, as enacted by Chapter 49, Laws of Utah 2003

57           **58-9-302**, as enacted by Chapter 49, Laws of Utah 2003

- 58           **58-9-303**, as enacted by Chapter 49, Laws of Utah 2003
- 59           **58-9-305**, as enacted by Chapter 49, Laws of Utah 2003
- 60           **58-9-306**, as enacted by Chapter 49, Laws of Utah 2003
- 61           **58-9-307**, as enacted by Chapter 49, Laws of Utah 2003
- 62           **58-9-501**, as enacted by Chapter 49, Laws of Utah 2003
- 63           **58-9-502**, as enacted by Chapter 49, Laws of Utah 2003
- 64           **58-9-503**, as enacted by Chapter 49, Laws of Utah 2003
- 65           **58-9-602**, as enacted by Chapter 49, Laws of Utah 2003
- 66           **58-9-701**, as enacted by Chapter 49, Laws of Utah 2003
- 67           **58-9-703**, as enacted by Chapter 49, Laws of Utah 2003
- 68           **58-9-706**, as enacted by Chapter 49, Laws of Utah 2003
- 69           **58-9-707**, as enacted by Chapter 49, Laws of Utah 2003

70 ENACTS:

- 71           **58-9-605**, Utah Code Annotated 1953
- 72           **58-9-606**, Utah Code Annotated 1953

73 REPEALS AND REENACTS:

- 74           **58-9-603**, as enacted by Chapter 49, Laws of Utah 2003



76 *Be it enacted by the Legislature of the state of Utah:*

77           Section 1. Section **26-4-16** is amended to read:

78           **26-4-16. Release of body for funeral preparations.**

79           (1) (a) Where a body is held for investigation or autopsy under [~~the provisions of~~] this  
80 chapter or for [~~any~~] a medical investigation permitted by law, the body shall, if requested by the  
81 person given priority under Section 58-9-602, be released for funeral preparations no later than  
82 24 hours after the arrival at the office of the medical examiner or regional medical facility.

83           (b) An extension may be ordered only by a district court.

84           (2) The right and duty to control the disposition of a deceased person [~~shall be~~] is  
85 governed by Sections 58-9-601 through [~~58-9-604~~] 58-9-606.

86 Section 2. Section **58-9-102** is amended to read:

87 **58-9-102. Definitions.**

88 In addition to the definitions in Section 58-1-102, as used in this chapter:

89 (1) "Beneficiary" means the individual who, at the time of the beneficiary's death, is to  
90 receive the benefit of the property and services purchased under a preneed funeral arrangement.

91 (2) "Board" means the Board of Funeral Service created in Section 58-9-201.

92 (3) "Buyer" means ~~[any]~~ a person who purchases a preneed funeral arrangement.

93 (4) "Calcination" means a process in which a dead human body is reduced by intense  
94 heat to a residue that is not as substantive as the residue that follows cremation.

95 (5) "Cremation" means the reduction of a dead human body by direct flame to residue  
96 that includes bone fragments.

97 (6) "Direct disposition" means the disposition of a dead human body:

98 (a) as quickly as law allows;

99 (b) without preparation of the body by embalming; and

100 (c) without ~~[any]~~ an attendant funeral service or graveside service.

101 (7) "Disposition" means the final disposal of a dead human body by:

102 (a) earth interment;

103 (b) above ground burial;

104 (c) cremation;

105 (d) calcination;

106 (e) burial at sea;

107 (f) delivery to a medical institution; or

108 (g) other lawful means.

109 (8) "Embalming" means replacing body fluids in a dead human body with preserving  
110 and disinfecting chemicals.

111 ~~[(9) "Funeral establishment" means a place established for any of the following  
112 purposes in connection with a dead human body:]~~

113 ~~[(a) custody;]~~

114 [~~(b)~~ shelter;]

115 [~~(c)~~ care;]

116 [~~(d)~~ preparation;]

117 [~~(e)~~ disposition; or]

118 [~~(f)~~ other services.]

119 [~~(10)~~] (9) (a) "Funeral merchandise" means any of the following into which a dead  
120 human body is placed in connection with the transportation or disposition of the body:

121 (i) [~~vaults~~] a vault;

122 (ii) [~~caskets~~] a casket; or

123 (iii) other personal property.

124 (b) "Funeral merchandise" does not include:

125 (i) a mausoleum [~~crypts~~] crypt;

126 (ii) [~~interment receptacles~~] an interment receptacle preset in a cemetery; or

127 (iii) a columbarium [~~niches~~] niche.

128 [~~(11)~~] (10) "Funeral service" means [~~any~~] a service, rite, or ceremony performed:

129 (a) with respect to the death of a human; and

130 (b) with the body of the deceased present.

131 [~~(12)~~] (11) "Funeral service director" means an individual licensed under this chapter  
132 who may engage in all lawful professional activities regulated and defined under the practice of  
133 funeral service.

134 (12) (a) "Funeral service establishment" means a place of business at a specific street  
135 address or location licensed under this chapter that is devoted to:

136 (i) the embalming, care, custody, shelter, preparation for burial, and final disposition of  
137 dead human bodies; and

138 (ii) the furnishing of services, merchandise, and products purchased from the  
139 establishment as a preneed provider under a preneed funeral arrangement.

140 (b) "Funeral service establishment" includes:

141 (i) all portions of the business premises and all tools, instruments, and supplies used in

142 the preparation and embalming of dead human bodies for burial, cremation, and final  
143 disposition as defined by division rule; and

144 (ii) a facility used by the business in which funeral services may be conducted.

145 ~~[(12)]~~ (13) "Funeral service ~~[apprentice]~~ intern" means an individual licensed under  
146 this chapter who is permitted to:

147 (a) assist a funeral service director in the embalming or other preparation of a dead  
148 human body for ~~[deposition]~~ disposition;

149 (b) assist a funeral service director in the cremation, calcination, or pulverization of a  
150 dead human body or its remains; and

151 (c) perform other funeral service activities under the supervision of a funeral service  
152 director.

153 (14) "Graveside service" means a funeral service held at the location of disposition.

154 (15) "Memorial service" means ~~[any]~~ a service, rite, or ceremony performed:

155 (a) with respect to the death of a human; and

156 (b) without the body of the deceased present.

157 (16) "Practice of funeral service" means:

158 (a) supervising the receipt of custody and transportation of a dead human body to  
159 prepare the body for:

160 (i) disposition; or

161 (ii) shipment to another location;

162 (b) entering into a contract with ~~[any]~~ a person to provide professional services  
163 regulated under this chapter;

164 (c) embalming or otherwise preparing a dead human body for disposition;

165 (d) supervising the arrangement or conduct of ~~[any of the following]~~:

166 (i) a funeral service;

167 (ii) a graveside service; or

168 (iii) a memorial service;

169 (e) cremation, calcination, or pulverization of a dead human body or the body's

- 170 remains;
- 171 (f) supervising the arrangement of:
- 172 (i) a disposition; or
- 173 (ii) a direct disposition;
- 174 (g) facilitating:
- 175 (i) a disposition; or
- 176 (ii) a direct disposition;
- 177 (h) supervising [~~sales~~] the sale of funeral merchandise by a funeral establishment;
- 178 (i) managing or otherwise being responsible for the practice of funeral service in a
- 179 licensed funeral service establishment;
- 180 (j) supervising the sale of a preneed funeral arrangement; and
- 181 (k) contracting with or employing individuals to sell a preneed funeral arrangement.
- 182 (17) (a) "Preneed funeral arrangement" means [~~any~~] a written or oral agreement sold in
- 183 advance of the death of the beneficiary under which a person agrees with a buyer to provide at
- 184 the death of the beneficiary any of the following as are typically provided in connection with a
- 185 disposition:
- 186 (i) goods;
- 187 (ii) services, including:
- 188 (A) embalming services; and
- 189 (B) funeral directing services;
- 190 (iii) real property; or
- 191 (iv) personal property, including:
- 192 (A) [~~caskets~~] a casket;
- 193 (B) [~~other~~] another primary [~~containers~~] container;
- 194 (C) a cremation or transportation [~~containers~~] container;
- 195 (D) an outer burial [~~containers~~] container;
- 196 (E) [~~vaults~~] a vault;
- 197 (F) a grave [~~liners~~] liner;

198 (G) funeral clothing and accessories;

199 (H) ~~[monuments]~~ a monument;

200 (I) a grave ~~[markers]~~ marker; and

201 (J) a cremation ~~[urns]~~ urn.

202 (b) "Preneed funeral arrangement" does not include a policy or product of life  
203 insurance providing a death benefit cash payment upon the death of the beneficiary which is  
204 not limited to providing the products or services described in Subsection (17)(a).

205 ~~[(18) "Provider" means a licensed funeral establishment that furnishes or will furnish  
206 the services or property purchased under a preneed funeral arrangement.]~~

207 ~~[(19)]~~ (18) "Pulverization" means a grinding process that reduces the residue of a  
208 cremation or calcination into a powdery substance.

209 ~~[(20)]~~ (19) "Sales agent" means an individual licensed under this chapter as a preneed  
210 funeral arrangement sales agent.

211 ~~[(21)]~~ (20) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-9-501.

212 ~~[(22)]~~ (21) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-9-502.

213 Section 3. Section **58-9-201** is amended to read:

214 **58-9-201. Board.**

215 (1) There is created the Board of Funeral Service consisting of:

216 (a) ~~[three]~~ four funeral service directors who own ~~[or]~~, have an ownership interest in,  
217 or have management responsibilities for a funeral service establishment~~[, at least two of which~~  
218 ~~are preneed funeral arrangement providers]~~;

219 (b) one preneed funeral arrangement sales agent, who does not have an ownership  
220 interest in a funeral service establishment; and

221 ~~[(c) one owner or officer of an endowment care cemetery; and]~~

222 ~~[(d)]~~ (c) two members from the general public who have no association with the  
223 funeral service profession.

224 (2) The board shall be appointed and serve in accordance with Section 58-1-201.

225 (3) (a) The duties and responsibilities of the board shall be in accordance with Sections

226 58-1-202 and 58-1-203. [~~In addition, the~~]

227 (b) The board shall designate one of its members on a permanent or rotating basis to:

228 [~~(a)~~] (i) assist the division in reviewing complaints concerning the unlawful or  
229 unprofessional conduct of a licensee; and

230 [~~(b)~~] (ii) advise the division in its investigation of these complaints.

231 (4) A board member who has, under Subsection (3), reviewed a complaint or advised  
232 the division in its investigation may be disqualified from participating with the board when the  
233 board serves as a presiding officer of an administrative proceeding concerning the complaint.

234 Section 4. Section **58-9-301** is amended to read:

235 **58-9-301. Licensure required -- License classifications.**

236 (1) A license is required to engage in the practice of funeral service, except as  
237 specifically provided in Sections 58-1-307 and 58-9-305.

238 (2) The division shall issue to a person who qualifies under this chapter a license in the  
239 classification of:

240 (a) funeral service director;

241 (b) funeral service [~~apprentice~~] intern;

242 (c) funeral service establishment; or

243 [~~(d) preneed funeral arrangement provider; or~~]

244 [~~(e)~~] (d) preneed funeral arrangement sales agent.

245 Section 5. Section **58-9-302** is amended to read:

246 **58-9-302. Qualifications for licensure.**

247 (1) Each applicant for licensure as a funeral service director shall:

248 (a) submit an application in a form prescribed by the division;

249 (b) pay a fee as determined by the department under Section 63-38-3.2;

250 (c) be of good moral character in that the applicant has not been convicted of:

251 (i) a first or second degree felony;

252 (ii) a misdemeanor involving moral turpitude; or

253 (iii) any other crime that when considered with the duties and responsibilities of a

254 funeral service director is considered by the division and the board to indicate that the best  
255 interests of the public are not served by granting the applicant a license;

256 (d) have ~~[completed]~~ obtained a high school ~~[education]~~ diploma or its equivalent or a  
257 higher education degree;

258 (e) have obtained an associate degree, or its equivalent, in mortuary science from a  
259 school of funeral service accredited by the American Board of Funeral Service Education or  
260 other accrediting body recognized by the U.S. Department of Education;

261 (f) have completed not less than 2,000 hours and 50 embalmings, over a period of not  
262 less than one year, of satisfactory performance in training as a licensed funeral service  
263 ~~[apprentice]~~ intern under the supervision of a licensed funeral service director; and

264 (g) ~~[have successfully completed]~~ obtain a passing score on examinations approved by  
265 the division in collaboration with the board.

266 (2) Each applicant for licensure as a funeral service ~~[apprentice]~~ intern shall:

267 (a) submit an application in a form prescribed by the division;

268 (b) pay a fee as determined by the department under Section 63-38-3.2;

269 (c) be of good moral character in that the applicant has not been convicted of:

270 (i) a first or second degree felony;

271 (ii) a misdemeanor involving moral turpitude; or

272 (iii) any other crime that when considered with the duties and responsibilities of a

273 funeral service ~~[apprentice]~~ intern is considered by the division and the board to indicate that  
274 the best interests of the public are not served by granting the applicant a license;

275 (d) have ~~[completed]~~ obtained a high school ~~[education]~~ diploma or its equivalent or a  
276 higher education degree; and

277 (e) ~~[have successfully completed]~~ obtain a passing score on an examination ~~[testing the~~  
278 ~~applicant's knowledge of the law and rules made under this chapter]~~ approved by the division  
279 in collaboration with the board.

280 (3) Each applicant for licensure as a funeral service establishment and each funeral  
281 service establishment licensee shall:

- 282 (a) submit an application in a form prescribed by the division;
- 283 (b) pay a fee as determined by the department under Section 63-38-3.2;
- 284 (c) have in place ~~[and]~~:
- 285 (i) an embalming room for preparing dead human bodies for burial or final disposition,
- 286 which may serve one or more facilities operated by the applicant;
- 287 (ii) a refrigeration room that maintains a temperature of not more than 40 degrees
- 288 fahrenheit for preserving dead human bodies prior to burial or final disposition, which may
- 289 serve one or more facilities operated by the applicant; and
- 290 (iii) maintain at all times a licensed funeral service director who is responsible for the
- 291 day-to-day operation of the funeral service establishment [as the sole proprietor, a managing
- 292 general partner, or an officer of a corporation or other business entity; and (d) if it is the
- 293 intention of] and who is personally available to perform the services for which the license is
- 294 required;
- 295 (d) affiliate with a licensed preneed funeral arrangement sales agent or funeral service
- 296 director if the funeral service establishment [to sell] sells preneed funeral arrangements[; file
- 297 with the division an application for a license to sell preneed funeral arrangements.];
- 298 ~~[(4) Each applicant for licensure as a preneed funeral arrangement provider shall:]~~
- 299 ~~[(a) submit an application in a form provided by the division;]~~
- 300 ~~[(b) pay a fee as determined by the department under Section 63-38-3.2;]~~
- 301 ~~[(c) be licensed in the state as a funeral service establishment;]~~
- 302 ~~[(d) be free of activities or conduct which, when considered with the responsibilities of~~
- 303 ~~a licensee and the public interest, is a threat to the public health, safety, or welfare;]~~
- 304 (e) file with the completed application a copy of each form of contract or agreement the
- 305 applicant will use in the sale of preneed funeral arrangements; and
- 306 (f) provide evidence of appropriate licensure with the Insurance Department if the
- 307 applicant intends to engage in the sale of any preneed funeral arrangements funded in whole or
- 308 in part by an insurance policy or product to be sold by the provider or the provider's sales agent.
- 309 ~~[(5)] (4) Each applicant for licensure as a preneed funeral arrangement sales agent~~

310 shall:

- 311 (a) submit an application in a form prescribed by the division;
- 312 (b) pay a fee as determined by the department under Section 63-38-3.2;
- 313 (c) be of good moral character in that the applicant has not been convicted of:
  - 314 (i) a first or second degree felony;
  - 315 (ii) a misdemeanor involving moral turpitude; or
  - 316 (iii) any other crime that when considered with the duties and responsibilities of a
  - 317 preneed funeral sales agent is considered by the division and the board to indicate that the best
  - 318 interests of the public are not served by granting the applicant a license;
  - 319 ~~[(d) be a high school graduate or have obtained a certificate of equivalency approved~~
  - 320 ~~by the division;]~~
  - 321 (d) have obtained a high school diploma or its equivalent or a higher education degree;
  - 322 (e) ~~[pass an]~~ have obtained a passing score on an examination approved by the division
  - 323 in collaboration with the board;
  - 324 (f) ~~[provide evidence that the applicant will be associated]~~ affiliate with a licensed
  - 325 ~~[preneed] funeral [arrangement provider upon issuance of a license under terms acceptable to~~
  - 326 ~~the division]~~ service establishment; and
  - 327 (g) provide evidence of appropriate licensure with the Insurance Department if the
  - 328 applicant intends to engage in the sale of any preneed funeral arrangements funded in whole or
  - 329 in part by an insurance policy or product.

330 Section 6. Section **58-9-303** is amended to read:

331 **58-9-303. Term of license -- Expiration -- Renewal.**

- 332 (1) (a) The division shall issue each license under this chapter in accordance with a
- 333 two-year renewal cycle established by rule.
- 334 (b) The division may by rule extend or shorten a renewal cycle by as much as one year
- 335 to stagger the renewal cycles it administers.
- 336 (2) Notwithstanding Subsection (1), a person who has once held a license as a funeral
- 337 service ~~[apprentice]~~ intern and has not qualified for licensure as a funeral service director may

338 be issued a subsequent funeral service [~~apprentice~~] intern license for only one additional  
339 two-year term upon the specific approval of the division in collaboration with the board.

340 (3) At the time of renewal, the funeral service director licensee shall show satisfactory  
341 evidence of completion of continuing education as required under Section 58-9-304.

342 (4) Each license automatically expires on the expiration date shown on the license  
343 unless the licensee renews it in accordance with Section 58-1-308.

344 (5) (a) Except as otherwise provided in Subsections (5)(b) and (c), the division may  
345 take action against the license of a funeral service establishment that does not have a licensed  
346 funeral service director.

347 (b) If a licensed funeral service director dies and leaves the funeral service  
348 establishment as part of the assets of the funeral service director's estate:

349 (i) the personal representative of the funeral service director's estate may operate the  
350 funeral service establishment under the license, or renewals of the license, for not more than  
351 two years from the date of the funeral service director's death without meeting the  
352 qualifications of an applicant and without having a licensed funeral service director; but

353 (ii) Subsection (5)(b)(i) does not allow an unlicensed person to perform a function that  
354 requires performance by a funeral service director licensed under this chapter.

355 (c) If the funeral service director of a licensed funeral service establishment terminates  
356 employment with the establishment, the establishment has 90 days to hire a new licensed  
357 funeral service director before action may be taken against the license under Subsection (5)(a).

358 Section 7. Section **58-9-305** is amended to read:

359 **58-9-305. Exemptions from licensure.**

360 In addition to the exemptions from licensure in Section 58-1-307, a person may engage  
361 in the following acts included within the definition of the practice of funeral service, subject to  
362 the stated circumstances and limitations, without being licensed under this chapter:

363 (1) transportation of a dead human body in accordance with other applicable state and  
364 federal laws;

365 (2) ambulance or other emergency transportation of a dead human body;

366 (3) the sale of any of the following that is delivered to the buyer or the buyer's designee  
367 within 90 days after the day of the sale:

368 (a) funeral merchandise;

369 (b) headstones; or

370 (c) other memorial merchandise;

371 (4) the performance of funeral, graveside, or memorial services by:

372 (a) a member of the clergy;

373 (b) a member of the decedent's family; or

374 (c) any other recognized individual;

375 (5) assisting a Utah licensed funeral service director regarding disasters or special  
376 emergencies by individuals licensed in other states as funeral service directors or embalmers;

377 (6) activities of an unlicensed individual employed by a funeral service establishment  
378 involving arrangement for a funeral service or the sale of funeral merchandise if the binding  
379 contract is reviewed, approved, and signed in behalf of the funeral service establishment by a  
380 licensed funeral service director; and

381 (7) nonprofessional tasks or activities which:

382 (a) do not require independent professional judgment [~~which~~]; and

383 (b) are required of persons employed by a funeral service establishment under the  
384 supervision of a funeral service director.

385 Section 8. Section **58-9-306** is amended to read:

386 **58-9-306. License by endorsement.**

387 The division may issue a license by endorsement under this chapter to a person who  
388 [~~holds a license to engage in the practice of funeral service from another state, jurisdiction, or~~  
389 ~~territory of the United States, if~~]:

390 [~~(1) the person's license is:~~

391 [~~(a) active;~~

392 [~~(b) in good standing; and~~

393 [~~(c) free from disciplinary action; and~~

394           ~~[(2) the person:]~~  
395           ~~[(a) meets the requirements of Section 58-1-302;]~~  
396           (1) provides documentation that the funeral service director's current licensure is  
397 active, in good standing, and free from any disciplinary action;  
398           (2) submits an application on a form provided by the division;  
399           (3) pays a fee determined by the department;  
400           ~~[(b)]~~ (4) is of good moral character in that the person has not been convicted of:  
401           ~~[(i)]~~ (a) a first or second degree felony;  
402           ~~[(ii)]~~ (b) a misdemeanor involving moral turpitude; or  
403           ~~[(iii)]~~ (c) any other crime that when considered with the duties and responsibilities of  
404 the license for which the person is applying is considered by the division and the board to  
405 indicate that the best interests of the public are not served by granting the applicant a license;  
406           ~~[(e)]~~ (5) has completed five years of lawful and active practice as a licensed funeral  
407 service director and embalmer within the ten years immediately preceding the application for  
408 licensure by endorsement;  
409           ~~[(d)]~~ (6) has passed a national examination determined by the division; and  
410           ~~[(e)]~~ (7) has [passed an examination on] demonstrated competency of the laws and the  
411 rules of the state as determined by the division.

Section 9. Section **58-9-307** is amended to read:

**58-9-307. Supervision of funeral service intern.**

414           (1) A person seeking licensure as a funeral service ~~[apprentice]~~ intern shall submit as a  
415 part of the application for a license:  
416           (a) the name of the licensed funeral service director who has agreed to supervise all  
417 duties performed by the applicant as an intern; and  
418           (b) the name of the licensed funeral service establishment at which the training and  
419 supervision shall take place.  
420           (2) A licensed funeral service director may supervise only one licensed funeral service  
421 ~~[apprentice]~~ intern at one time.

422 (3) (a) Within 30 days after the day on which the supervisor-supervisee relationship  
423 between a licensed funeral service director and a licensed funeral service [~~apprentice~~] intern  
424 terminates, the funeral service director shall furnish to the division a report of the performance  
425 of the funeral service [~~apprentice~~] intern.

426 (b) The report shall be in form and content as prescribed by the division.

427 (4) (a) A licensed funeral service [~~apprentice may apply to~~] intern shall notify the  
428 division [~~to request supervision by a different~~] of any change in the intern's supervising funeral  
429 service director. [The application shall be made on a form prescribed by the division. A  
430 change of supervisor requires approval of the division.]

431 (b) The supervising funeral service director shall submit to the division, in accordance  
432 with Subsection (3), a report of the funeral service [~~apprentice's~~] intern's performance.

433 (5) The licensed funeral service director is responsible for supervision of all of the  
434 duties and functions performed by the funeral service [~~apprentice~~] intern throughout the entire  
435 internship period.

436 Section 10. Section **58-9-501** is amended to read:

437 **58-9-501. Unlawful conduct.**

438 "Unlawful conduct" includes:

439 (1) doing any of the following to prepare a dead human body for disposition unless  
440 licensed as a funeral service director or a funeral service [~~apprentice~~] intern:

441 (a) embalming;

442 (b) calcinating;

443 (c) pulverizing;

444 (d) cremating; or

445 (e) using any method that invades a dead human body;

446 (2) using the title "funeral service director," "funeral service [~~apprentice~~] intern,"

447 "preneed funeral service sales agent," or "funeral service establishment" unless licensed under  
448 this chapter;

449 (3) engaging in, providing, or agreeing to provide funeral arrangements to be provided

450 under a preneed funeral arrangement without first obtaining a license as a ~~[preneed]~~ funeral  
451 ~~[arrangement provider]~~ service establishment under this chapter;

452 (4) engaging in selling, representing for sale, or in any other way offering to sell any  
453 contract under which preneed funeral arrangements are to be provided without first obtaining a  
454 license under this chapter as:

455 (a) a preneed funeral arrangement sales agent; or

456 (b) a funeral service director; and

457 ~~[(5) selling or representing for sale any preneed funeral arrangement contract or~~  
458 ~~agreement:]~~

459 ~~[(a) which has not been approved as to form and content by the division; and]~~

460 ~~[(b) a current copy of which is not on file with the division; and]~~

461 ~~[(6)]~~ (5) failing to comply with Section 58-9-702.

462 Section 11. Section **58-9-502** is amended to read:

463 **58-9-502. Unprofessional conduct.**

464 (1) "Unprofessional conduct" includes:

465 (a) the failure of a funeral service director to accurately document, report, and  
466 supervise the activities of a funeral service ~~[apprentice]~~ intern;

467 (b) knowingly soliciting the sale of any funeral service or funeral merchandise for a  
468 person whose death occurred or was imminent prior to the solicitation; ~~[and]~~

469 (c) paying or offering to pay a commission or anything of value to secure deceased  
470 human remains for a funeral service or disposition to:

471 (i) medical personnel;

472 (ii) a nursing home;

473 (iii) a nursing home employee;

474 (iv) a hospice;

475 (v) a hospice employee;

476 (vi) clergy;

477 (vii) a government official; or

- 478 (viii) any other third party[-]; and
- 479 (d) failure to provide the following current information to the division:
- 480 (i) a licensee's business address;
- 481 (ii) a licensee's primary residence;
- 482 (iii) a funeral service establishment's funeral service director; or
- 483 (iv) a supervising funeral service director's funeral service intern's name.

- 484 (2) "Unprofessional conduct" does not include:
- 485 (a) general advertising directed to the public at large; or
- 486 (b) responding to a notification of death from:
- 487 (i) medical personnel;
- 488 (ii) a nursing home;
- 489 (iii) a nursing home employee;
- 490 (iv) a hospice;
- 491 (v) a hospice employee;
- 492 (vi) clergy;
- 493 (vii) a government official; or
- 494 (viii) any authorized representative of the family of the deceased person.

495 Section 12. Section **58-9-503** is amended to read:

496 **58-9-503. Penalty for unlawful conduct.**

497 (1) [~~Any~~] A person who violates the unlawful conduct provisions defined in  
498 Subsections 58-9-501(1) through [~~(5)~~] (4) is guilty of a class A misdemeanor.

499 (2) [~~Any~~] A person who violates the unlawful conduct provision defined in Subsection  
500 58-9-501[~~(6)~~](5) may be prosecuted under Title 76, Chapter 6, Part 4, Theft.

501 Section 13. Section **58-9-602** is amended to read:

502 **58-9-602. Determination of control of disposition.**

503 The right and duty to control the disposition of a deceased person, including the  
504 location, manner and conditions of the disposition, and arrangements for funeral goods and  
505 services to be provided vest in the following degrees of relationship in the order named,

506 provided the person is at least 18 and is mentally competent:

507 (1) a person designated in a written instrument, excluding a power of attorney that  
508 terminates at death under Sections 75-5-501 and 75-5-502, if the written instrument contains:

509 (a) the name and address of the decedent;

510 (b) the name and address of the person designated under this Subsection (1);

511 (c) directions that the person designated in this Subsection (1) is authorized to carry out  
512 the disposition of the decedent's remains;

513 ~~[(e)]~~ (d) the signature of the decedent;

514 ~~[(d)]~~ (e) the signatures of at least two unrelated individuals who are not the person  
515 designated under this Subsection (1), each of whom signed within a reasonable time after  
516 witnessing the signing of the form by the decedent; and

517 ~~[(e)]~~ (f) the date or dates the written instrument was prepared and signed;

518 (2) the surviving, legally recognized spouse of the decedent;

519 (3) (a) the sole surviving child [or the majority of the surviving children] of the  
520 decedent [over the age of 18], or if there is more than one child of the decedent, the majority of  
521 the surviving children;

522 ~~[(4) the unanimous consent of the surviving parent, parents, or lawful custodian of the~~  
523 ~~decedent;]~~

524 ~~[(5) the person or persons in the next degree of succession under Title 75, Chapter 2,~~  
525 ~~Intestate Succession and Wills;]~~

526 (b) less than one-half of the surviving children are vested with the rights of this section  
527 if they have used reasonable efforts to notify all other surviving children of their instructions  
528 and are not aware of any opposition to those instructions on the part of more than one-half of  
529 all surviving children;

530 (4) the surviving parent or parents of the decedent, and if one of the surviving parents  
531 is absent, the remaining parent is vested with the rights and duties of this section after  
532 reasonable efforts have been unsuccessful in locating the absent surviving parent;

533 (5) (a) the surviving brother or sister of the decedent, or if there is more than one

534 sibling of the decedent, the majority of the surviving siblings;

535 (b) less than the majority of surviving siblings are vested with the rights and duties of  
536 this section if they have used reasonable efforts to notify all other surviving siblings of their  
537 instructions and are not aware of any opposition to those instructions on the part of more than  
538 one-half of all surviving siblings;

539 (6) the person in the classes of the next degree of kinship, in descending order, under  
540 the laws of descent and distribution to inherit the estate of the decedent, and if there is more  
541 than one person of the same degree, any person of that degree may exercise the right of  
542 disposition;

543 ~~[(6)]~~ (7) any public official charged with arranging the disposition of deceased persons;  
544 and

545 ~~[(7) a person or persons whom the funeral service director reasonably believes is~~  
546 ~~entitled to control the disposition; and]~~

547 (8) in the absence of any person under Subsections (1) through (7), any other person  
548 willing to assume the [right and duty to control the disposition] responsibilities to act and  
549 arrange the final disposition of the decedent's remains, including the personal representative of  
550 the decedent's estate or the funeral service director with custody of the body, after attesting in  
551 writing that a good faith effort has been made to no avail to contact the individuals referred to  
552 in Subsections (1) through (7).

553 Section 14. Section **58-9-603** is repealed and reenacted to read:

554 **58-9-603. Loss of right of disposition.**

555 (1) As used in this section, "estranged" means a physical and emotional separation  
556 from the decedent at the time of death which has existed for a period of time that clearly  
557 demonstrates an absence of affection, trust, and regard for the decedent.

558 (2) A person who has a right of disposition under this chapter forfeits that right and the  
559 right is passed on to the next qualifying person as listed in Section 58-9-602 under the  
560 following circumstances:

561 (a) the person is charged with first or second degree murder or voluntary manslaughter

562 in connection with the decedent's death, and the charges are known by the funeral service  
563 director, except that if the charges against the person are dropped or if the person is acquitted  
564 of the charges, the right of disposition is returned to the person;

565 (b) the person does not exercise the person's right of disposition within three days of  
566 notification of the decedent's death or within five days of the decedent's death, whichever is  
567 earlier; or

568 (c) if a probate court under Section 58-9-605 determines that the person entitled to the  
569 right of disposition and the decedent were estranged at the time of death.

570 Section 15. Section **58-9-605** is enacted to read:

571 **58-9-605. Disputes.**

572 (1) Notwithstanding Sections 58-9-601 through 58-9-604, the probate court for the  
573 county in which the decedent resided may:

574 (a) award the right of disposition to the person determined by the court to be the most  
575 fit and appropriate to carry out the right of disposition; and

576 (b) make decisions regarding the decedent's remains if those sharing the right of  
577 disposition cannot agree.

578 (2) The following provisions apply to the probate court's determinations under this  
579 section:

580 (a) if the persons holding the right of disposition are two or more persons with the  
581 same relationship to the decedent, and they cannot, by majority vote, make a decision regarding  
582 the disposition of the decedent's remains, any of those persons or a funeral service director with  
583 custody of the remains may petition the probate court to make the decision;

584 (b) in making a determination the probate court shall consider:

585 (i) the reasonableness and practicality of the proposed funeral arrangements and  
586 disposition;

587 (ii) the degree of the personal relationship between the decedent and each of the  
588 persons claiming the right of disposition;

589 (iii) the desires of the person or persons who are ready, able, and willing to pay the cost

590 of the funeral arrangements and disposition:

591 (iv) the convenience and needs of other families and friends wishing to pay their  
592 respects:

593 (v) the desires of the decedent; and

594 (vi) the degree to which the funeral arrangements would allow maximum participation  
595 by all who wish to pay their respects.

596 (3) (a) In a dispute regarding the right of disposition, until the funeral service director  
597 receives a court order or other written agreement signed by the parties to the dispute that  
598 decides the final disposition of the remains, the funeral service director is not liable for refusing  
599 to:

600 (i) accept the decedent's remains;

601 (ii) inter or otherwise dispose of the decedent's remains; or

602 (iii) complete the arrangements for the final disposition of the decedent's remains.

603 (b) If, during a dispute, a funeral service director retains a decedent's remains for final  
604 disposition, the director may:

605 (i) embalm or refrigerate and shelter the body, or both, to preserve it while awaiting the  
606 final decision of the probate court; and

607 (ii) add the costs incurred under Subsection (3)(b)(i) to the final disposition costs.

608 (4) The legal fees and court costs incurred by a funeral service director for petitioning  
609 the probate court under Subsection (2)(a) may be added to the final disposition costs.

610 (5) (a) This section does not require or impose a duty upon a funeral service director to  
611 bring an action under Subsection (2)(a).

612 (b) A funeral service director may not be held criminally or civilly liable for failing to  
613 bring an action under Subsection (2)(a).

614 (6) Except to the degree that it may be considered by the probate court under  
615 Subsection (2)(b)(iii), the fact that a person has paid for or agreed to pay for all or part of the  
616 decedent's funeral arrangements and final disposition does not give that person a higher priority  
617 to the right of disposition that the person would otherwise have.

618           (7) The personal representative of the decedent's estate does not, by virtue of being the  
619 personal representative, have a greater claim to the right of disposition than the personal  
620 representative would otherwise have.

621           Section 16. Section **58-9-606** is enacted to read:

622           **58-9-606. Right to rely -- Immunity.**

623           (1) A person signing a funeral service agreement, cremation authorization form, or  
624 other authorization for a decedent's disposition warrants the truthfulness of the facts set forth in  
625 the document, including the identity of the decedent and the person's authority to order the  
626 disposition.

627           (2) A funeral service establishment has the right to rely on a contract or authorization  
628 executed under Subsection (1) and may carry out the instructions of the person whom its  
629 funeral service director reasonably believes holds the right of disposition.

630           (3) A funeral service director incurs no civil or criminal liability for failure to contact  
631 or independently investigate the existence of any next-of-kin or relative of the decedent.

632           (4) If there are at least two persons in the nearest class of the next-of-kin who are equal  
633 in priority and a funeral service director has no knowledge of an objection by other members of  
634 the class, the funeral service director may rely on and act according to the instructions of the  
635 first person in the class to make funeral and disposition arrangements.

636           (5) A funeral service establishment or funeral service director who relies in good faith  
637 on the instructions of a person claiming the right of disposition under this part is immune from  
638 civil and criminal liability and disciplinary action in carrying out the disposition of a decedent's  
639 remains in accordance with that person's instructions.

640           Section 17. Section **58-9-701** is amended to read:

641           **58-9-701. Preneed contract requirements.**

642           (1) (a) Every preneed funeral arrangement sold in Utah shall be evidenced by a written  
643 contract.

644           (b) The [provider] funeral service establishment shall [file the form of the contract with  
645 the division. Approval of the contract by the division is required before:] maintain a copy of

646 the contract until five years after all of its obligations under the contract have been executed.

647 ~~[(a) any representation may be made by a provider or sales agent to a potential buyer;~~

648 ~~or]~~

649 ~~[(b) any sale.]~~

650 (2) Each preneed contract form ~~[approved by the division]~~ shall:

651 (a) be written in clear and understandable language printed in an easy-to-read type size  
652 and style;

653 (b) bear the preprinted name, address, telephone number, and license number of the  
654 ~~[provider]~~ funeral service establishment obligated to provide the services under the contract  
655 terms;

656 (c) be sequentially numbered by contract form;

657 (d) clearly identify that the contract is a guaranteed product contract;

658 (e) provide that a trust is established in accordance with the provisions of Section  
659 58-9-702;

660 (f) if the contract is funded by an insurance policy or product, provide that the  
661 insurance policy or product is filed with the Insurance Department and meets the requirements  
662 of Title 31A, Insurance Code; and

663 (g) conform to other standards created by rule under Title 63, Chapter 46a, Utah  
664 Administrative Rulemaking Act, to protect the interests of buyers and potential buyers.

665 ~~[(3) No modification of the form, terms, or conditions of the preneed contract may be  
666 made without the prior written approval of the division. The division may not unreasonably  
667 withhold approval.]~~

668 ~~[(4)]~~ (3) A preneed contract shall provide for payment by the buyer in a form which  
669 may be liquidated by the ~~[provider]~~ funeral service establishment within 30 days after the day  
670 the ~~[provider]~~ funeral service establishment or sales agent receives the payment.

671 ~~[(5)]~~ (4) A preneed contract may not be revocable by the ~~[provider]~~ funeral service  
672 establishment except:

673 (a) in the event of nonpayment; and

674 (b) under terms and conditions clearly set forth in the contract.

675 [~~(6)~~] (5) (a) A preneed contract may not be revocable by the buyer or beneficiary

676 except:

677 (i) in the event of:

678 (A) a substantial contract breach by the [provider] funeral service establishment; or

679 (B) substantial evidence that the [provider] funeral service establishment is or will be  
680 unable to provide the personal property or services to the beneficiary as provided under the  
681 contract; or

682 (ii) under terms and conditions clearly set forth in the contract.

683 (b) The contract shall contain a clear statement of the manner in which payments made  
684 on the contract shall be refunded to the buyer or beneficiary upon revocation by the beneficiary.

685 [~~(7)~~] (6) (a) A preneed contract shall provide the buyer the option to require the  
686 [provider] funeral service establishment to furnish a written disclosure to a person who does  
687 not live at the same residence as the buyer.

688 (b) The buyer may choose:

689 [~~(a)~~] (i) a full disclosure containing a copy of the entire preneed contract;

690 [~~(b)~~] (ii) a partial disclosure informing the recipient of:

691 [~~(i)~~] (A) the existence of a preneed contract; and

692 [~~(ii)~~] (B) the name, address, telephone number, and license number of the [provider]  
693 funeral service establishment obligated to provide the services under the preneed contract; or

694 [~~(c)~~] (iii) not to require the [provider] funeral service establishment to furnish a written  
695 disclosure to another person.

696 Section 18. Section **58-9-703** is amended to read:

697 **58-9-703. Trust agreement.**

698 (1) Each trust established by a [provider] funeral service establishment shall be  
699 administered in accordance with a trust agreement conforming with:

700 (a) the requirements of this chapter;

701 (b) rules adopted with respect to this chapter;

702 (c) the provisions of Title 75, Chapter 7, [~~Trust Administration~~] Utah Uniform Trust  
703 Code; and

704 (d) all other state and federal laws applicable to trusts and trust agreements.

705 (2) Each trust agreement shall require that the [~~provider report to the division;~~] funeral  
706 service establishment maintain a copy of the trust agreement until five years after all of its  
707 obligations under the trust agreement have been executed or transferred.

708 [~~(a) funds deposited into the trust in the name of the beneficiary;~~]

709 [~~(b) the contract number; and]~~

710 [~~(c) that the trustee shall establish a separate account within the trust for each~~  
711 ~~beneficiary and contract number.]~~

712 (3) Each trust agreement shall require that the trustee:

713 (a) separately account for each contract; and

714 (b) separately record payments with respect to each contract made into the corpus of  
715 the trust.

716 (4) Each trust agreement shall provide for distributions from the trust in accordance  
717 with the provisions of this chapter upon:

718 (a) the death of the beneficiary;

719 (b) revocation of the contract by the [~~provider~~] funeral service establishment upon  
720 nonpayment by the buyer; or

721 (c) revocation of the contract by the beneficiary or buyer.

722 Section 19. Section **58-9-706** is amended to read:

723 **58-9-706. Trust funds and insurance reports.**

724 (1) (a) Each [~~provider~~] funeral service establishment shall [~~file an annual report with~~  
725 ~~the division on or before April 15 of each year in a form provided by the division]~~ maintain an  
726 annual report of preneed trust funds and insurance.

727 (b) The report shall [~~state~~] contain:

728 [~~(a)~~] (i) the name of the trustees with which the [~~provider~~] funeral service  
729 establishment has trust funds on deposit; and

730           ~~[(b)]~~ (ii) the amount remaining on deposit in the trust fund on:  
731           ~~[(i)]~~ (A) December 31 of the preceding year; or  
732           ~~[(ii)]~~ (B) another annual reporting period as the division may establish.  
733           ~~[(2) (a) A provider is not required to renew its license if the provider:]~~  
734           ~~[(i) has outstanding contracts; and]~~  
735           ~~[(ii) has discontinued the sale of contracts:]~~  
736           ~~[(b) A provider that does not renew its license pursuant to this Subsection (2) shall~~  
737 ~~continue to make annual reports to the division until all outstanding contracts have been:]~~  
738           ~~[(i) fully performed; or]~~  
739           ~~[(ii) transferred to a licensed provider:]~~  
740           (2) Each funeral service establishment may be audited by the division at any time.  
741           Section 20. Section **58-9-707** is amended to read:  
742           **58-9-707. Records of trustee -- Contents.**  
743           (1) The trustee shall keep ~~[a]~~ an orderly record of all agreements.  
744           (2) The record shall contain:  
745           ~~[(1)]~~ (a) the name and address of the person making ~~[payments]~~ a payment;  
746           ~~[(2)]~~ (b) the date and the amount of each payment made;  
747           ~~[(3)]~~ (c) the date and amount of each withdrawal and to whom paid; and  
748           ~~[(4)]~~ (d) the name of the bank or trust company depository.